IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

COMMON ORDER IN

CIVIL APPLICATION NO. 892 OF 2006

IN

APPEAL FROM ORDER No.659 of 2006

AND

CIVIL APPLICATION NO. 893 OF 2006

IN

APPEAL FROM ORDER No.659 of 2006

Mohd.Shahab Abdul Vahab Farid & Anr.. Applicants

versus

Ganesh Mohnlal Pardeshi .. Respondent

...

Mr.G.S. Godbole with Mr.S.M. Sahastrabudhe for the applicants.

Mrs.Neeta P. Karnik for the respondent.

CORAM : D.G. KARNIK, J

DATED : 21st September 2006

P.C.:

1. These two civil applications have been taken in two appeals arising out of two cross suits between the parties. Since the suits are cross suits, for the sake of convenience in this order parties are referred to as "owners" and "developer/purchaser" respectively. The developer/ purchaser has filed a suit for specific performance of the suit agreement. The owner has filed a suit for cancellation/termination of the suit agreement. Admittedly under the agreement, the developer/purchaser has paid Rs.6,20,000/- though according to the developer he has paid Rs.6,95,000/- to the owners, out of the total consideration of Rs.16,00,000/-. Thus, a substantial portion of the consideration has been paid.

2. The suit land was reserved for garden. Under the suit agreement the developer/purchaser was entitled to get the land released from said reservation and/or to obtain TDR in respect thereof. However from the letter dated 25th April 2003 (Annexure -2 to the affidavit in reply) filed by the developer/purchser, it

appears that the owners had already surrendered the suit land or part thereof and received compensation from the municipal corporation. The owners did not disclose this to the developer/purchaser. The developer/purchaser therefore claims that there has been a breach on the part of the owners and therefore the developer is entitled to withhold further the payment as the owners had not performed their part of the contract. This requires consideration. In the circumstances, it cannot be said that the injunction granted in favour of the developer/purchaser by the trial court is without merit. Hence, interim relief of stay of the order of the trial court is declined.

3. Mr.Godbole, learned counsel for the applicants prays for stay of this order. The trial court has already granted injunction and I have declined to stay the order of the trial court. Hence, there is no question of granting any stay to this order. Hence, the request is rejected.

D.G. KARNIK, J